

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re:)
)
EXIDE TECHNOLOGIES, et al.) Bk. No. 02-11125 (KJC)
)
)
ENERSYS DELAWARE, INC.,) Civ. No. 06-302 (SLR)
)
Appellant,)
) AP No. 06-33
v.)
)
EXIDE TECHNOLOGIES,) Related Docket Nos. 11 and 13
)
Appellee.)
)

**REPLY OF REORGANIZED EXIDE TECHNOLOGIES TO OBJECTION
OF ENERSYS DELAWARE, INC. F/K/A ENERSYS, INC. TO MOTION
OF REORGANIZED EXIDE TECHNOLOGIES TO EXPEDITE APPEAL**

Reorganized Exide Technologies and its debtor affiliates (collectively, “Exide”) hereby replies to the Objection (the “Objection”) of EnerSys Delaware, Inc. f/k/a EnerSys, Inc. (“EnerSys”) to Motion of Reorganized Exide Technologies to Expedite Appeal (the “Motion”), and respectfully states as follows:

BACKGROUND

1. On August 5, 2006, Exide filed the Motion in which it requested that the Court expedite this appeal filed by EnerSys (as amended, the “Appeal”). Specifically, Exide requested the immediate entry of a briefing schedule and an accelerated schedule for oral argument, if such argument were desired by the Court.

2. On August 8, 2006, the Court entered a scheduling order (the “Scheduling Order”), which established a briefing schedule.

3. On August 16, 2006, EnerSys filed the Objection, in which it argues that the Motion was improperly filed as it did not contain a certification (“Certification”) pursuant to Local Rule 7.1.1 of Civil Practice and Procedure of the United States District Court for the District of Delaware, that the Motion is moot, and that the Scheduling Order provides a reasonable timetable for briefing.

REPLY

4. To the extent the Motion was deficient for failing to include a Certification, simultaneously with the filing of this Reply, Exide files its Certification. As illustrated by the Certification, on at least three separate occasions, counsel for Exide proposed a joint motion to expedite the Appeal, which EnerSys refused each time. On May 26, 2006, Matthew Kleiman, counsel for Exide, proposed a joint motion to expedite in a call with EnerSys’s counsel, Robert Lapowsky. EnerSys, through Mr. Lapowsky, rejected the proposal that same day. On June 21, 2006, at the hearing before the bankruptcy court on transition matters, Exide again proposed that the parties jointly agree to expedite the appeal. EnerSys refused. While most of this proposal was discussed outside the courtroom, it was also referenced several times on the record. Finally, on July 27, 2006 at the mediation in Wilmington, Delaware, once it became evident that a settlement was not going to be reached, Mr. Kleiman invited EnerSys to join in the anticipated Motion. EnerSys, through Mr. Lapowsky, again declined. *See* Certification of Counsel Pursuant to Local Rule of Civil Practice and Procedure for the United States District Court for the District of Delaware 7.1.1 attached hereto. Further, EnerSys, in paragraph 6 of the Objection, acknowledges that, prior to filing the Motion, counsel for Exide communicated with counsel for EnerSys in an attempt to reach agreement on the matters set forth in the Motion.

5. Exide also notes that the Motion is not moot. It does not appear that this Court

considered the Motion when it issued its Scheduling Order. The Court still has discretion to expedite the appeal, and for the reasons stated in the Motion, good cause exists for doing so.

6. Exide respectfully suggests that after the filing of EnerSys's opening brief on September 5, 2006 (as provided in the Scheduling Order) the governing timetable should be as set forth in Rule 8009 of the Federal Rules of Bankruptcy Procedure. Under Rule 8009, Exide's brief in opposition to the appeal would be due within 15 days after service of EnerSys's opening brief, *i.e.*, on or before September 20, 2006. Rule 8009 provides that EnerSys's reply brief would be due within 10 days after service of Exide's brief, *i.e.*, on or before October 2, 2006.

7. Exide also notes that EnerSys makes no objection to Exide's request for an accelerated schedule for oral argument, if such argument were desired by the Court. Accordingly, Exide respectfully requests that the Court grant such relief.

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WHEREFORE, for the reasons stated above and in the Motion, Exide respectfully requests that this Court expedite the Appeal and enter an order (i) setting a revised briefing schedule as provided in this Reply; (ii) setting an accelerated schedule for oral argument, if such argument is desired by the Court; and (iii) granting such other and further relief as the Court deems just and proper.

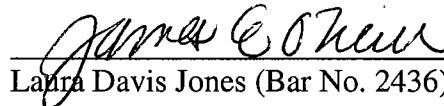
Dated: August 23, 2006

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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**CERTIFICATION OF COUNSEL PURSUANT TO
LOCAL RULE OF CIVIL PRACTICE AND PROCEDURE FOR THE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE 7.1.1**

1. I, Matthew N. Kleiman, counsel for Reorganized Exide Technologies (“Exide”), pursuant to D.Del.L.R. 7.1.1, hereby file this certification in support of the *Motion of Reorganized Exide Technologies to Expedite Appeal* [Docket No. 11] (the “Motion”) filed on August 5, 2006 and the *Reply of Reorganized Exide Technologies to Objection of EnerSys Delaware, Inc. f/k/a EnerSys, Inc.* (“EnerSys”) to Motion of Reorganized Exide Technologies to Expedite Appeal filed concurrently with this certification.

2. Prior to filing the Motion, Exide, through its counsel, made several attempts to reach agreement with EnerSys on Exide’s request to expedite the pending appeal as follows:

a. On May 26, 2006, I proposed to EnerSys a joint motion to expedite as part of a settlement proposal relating to the transition component of the dispute between the parties.

This was done in a telephone call between myself and Robert Lapowsky, counsel for EnerSys. EnerSys, through Mr. Lapowsky, rejected the proposal that same day.

b. On June 21, 2006, at the hearing on transition matters before the Bankruptcy Court, Exide repeatedly proposed that the parties jointly agree to expedite the appeal. This was primarily discussed outside the courtroom in settlement negotiations, but was also referenced several times on the record. See Transcript of Hearing on June 21, 2006 at pages 13, 19-20, and 22, attached hereto as Exhibit A. EnerSys refused to agree.

c. On July 27, 2006, at the mediation in Wilmington, once it became evident that a settlement was not going to be reached, I invited EnerSys to join in our anticipated motion to expedite. EnerSys, through Mr. Lapowsky, again declined.

These efforts were unsuccessful and, accordingly, Exide filed the Motion.

Dated: August 23, 2006

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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: : Chapter 11

Exide Technologies,

Reorganized Debtors. : Bankruptcy #02-11125 (KJC)

Wilmington, DE

June 21, 2006

10:00 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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(Via telephone)

Holly Pritchard
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1 independent expert, and given the fact that we are so close,
2 18, 24, 24, 24, and given my understanding that I don't think
3 EnerSys feels the need for experts at this stage -- and they
4 can certainly speak to that if they disagree -- that's no
5 longer part of our proposal for this process.

6 THE COURT: And I, and after hearing the parties at
7 this point, I don't think it would be useful to add yet another
8 layer of process to the process.

9 MR. FUREY: Good. Well, we're all in agreement on
10 that, Your Honor. And the revised Transition Plan is all about
11 avoiding delay. And we are certainly going to move to expedite
12 the appellate process, and hopefully EnerSys will join in that
13 so that everyone can have a decision before there's a need for
14 further hearings on Motions for Stay. But we think we can
15 accelerate that process.

16 And then the last clarification. What I've presented is
17 in tandem with the Motion for Stay issue. And, you know, we've
18 made a huge concession, especially with respect to the rest of
19 the world. And if the stay were granted here today, we would
20 want to revisit that issue before the Court orders the final
21 Transition Plan.

22 THE COURT: Okay. I'm sorry, I don't -- tell me what
23 you mean.

24 MR. FUREY: Mr. Kleiman is going to be arguing on the
25 Motion for Stay. EnerSys is gonna argue on the Motion for

1 fully out of the market; 18 months for EnerSys to leave the
2 market; 6 more months for EnerSys to sell off any pipeline
3 inventory with some communications details being added to that
4 timeline. As I said before I left, I didn't see there being
5 much of a gap between what we had proposed within the limits of
6 what your order allowed, which was a maximum of 2 years, and
7 what they've proposed. So again, subject to seeing it in
8 writing, I think we're either there or very close to being
9 there.

10 The stay issue is still alive, though. And it's alive for
11 the reasons that I referred to before we went off the record,
12 and that is our concern that any either withdrawal by us of the
13 Stay Motion at this point or failure to prosecute it fully,
14 meaning with you, and if you deny it, with the Appellate Court,
15 could be argued to have some impact if we were to then reassert
16 the request later on when were closer to the point in time when
17 Exide could enter the market. So because of that uncertainty,
18 we would intend to press the request for the stay,
19 notwithstanding the probable highly likely agreement on the
20 Transition Plan. And I have argument that I can make on the
21 Stay Motion. And since it's our motion, I guess I would go
22 first, but I'll defer to Exide at this point and see if they
23 have anything they would like to say about where we are.

24 THE COURT: All right. Thank you.

25 MR. KLEIMAN: Well, Your Honor, not to quibble with

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1 the characterization, but I don't think it's quite accurate to
2 say that we have a deal because without going into any of the
3 particulars that were discussed off the record, what Exide
4 proposed to EnerSys was a proposal to address all of the issues
5 on the agenda today, the Transition Plan and the stay,
6 including the proposal at address the concern that Mr. Lapowsky
7 just described about somehow being prejudiced when they might
8 renew a Stay Motion down the road. Our proposal also included
9 a joint Motion to Expedite in front of the District Court so
10 that we can get that proceeding moving along as quickly as
11 possible. Somewhere in those details, EnerSys concluded it was
12 not in their best interests to accept our proposal. And so
13 we're obviously pleased that there does not appear to be
14 disagreement in terms of the details of the Transition Plan
15 itself. Our position is and remains that our proposal, as Mr.
16 Furey described it and as we're prepared to clarify it in a
17 written post-hearing submission, does obviate any basis for the
18 entry of a stay now. We understand that Your Honor would
19 probably have to either deny it, deny it without prejudice, and
20 we may be revisiting these issues some time down the road. We
21 may be revisiting these issues next week in front of the
22 District Court. But our position is and remains that we oppose
23 the stay, and I reserve my rights to present argument after Mr.
24 Lapowsky.

25 THE COURT: Well, I'm not going to hear further

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1 question is how does the Court wish to proceed in terms of the
2 timing and the scheduling of events, whether hearing or
3 otherwise, after that.

4 THE COURT: I'd like to set up a timetable which sets
5 a deadline by which the Debtor will provide the written
6 proposal to EnerSys, give EnerSys some time to react and
7 discuss that with the Debtor. And if there is no resolution
8 that would be capable of submission under certification, then I
9 would say let's address the matter at a further hearing. Now,
10 depending on how agile the parties are and what counsels'
11 schedules are, I could set that hearing for the date we talked
12 about next week, or we could work it out so that we'd consider
13 any open issues in July at the July 12th hearing.

14 MR. KLEIMAN: Your Honor, I think we would strongly
15 prefer to use that date next week if at all possible. As I
16 said, it is going to be Exide's view that the appeal should be
17 expedited, and whether it's unilateral or whether EnerSys
18 ultimately decides to join us in that motion, we do intend to
19 seek to move that along as quickly as possible. So in
20 connection with that, we think that the sooner we have
21 resolution of the issues before this Court, the easier it will
22 be for Judge Robinson to tackle the issues that need to be
23 addressed on appeal.

24 THE COURT: Well --

25 MR. KLEIMAN: And we're certainly prepared to make our

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Appellant,)
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v.)
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EXIDE TECHNOLOGIES,)
)
Appellee.)
)

CERTIFICATE OF SERVICE *J*

I, James E. O'Neill, hereby certify that on the 23 day of August, 2006, I caused a copy of the following document(s) to be served on the individuals on the attached service list(s) in the manner indicated:

Reply of Reorganized Exide Technologies to Objection of EnerSys Delaware, Inc. f/k/a EnerSys, Inc. to Motion of Reorganized Exide Technologies to Expedite Appeal

Certification of Counsel Pursuant to Local Rule of Civil Practice and Procedure for the United States District Court for the District of Delaware
7.1.1

James E. O'Neill
James E. O'Neill (Bar No. 4042)

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